Massillon Newspapers, Inc. d/b/a The Independent *and* Cleveland Newspaper Guild Local 1 a/w The Newspaper Guild, AFL–CIO. Cases 8–CA–24395, 8–CA–2477l, 8–CA–25050, and 8–CA–25153

March 25, 1996

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On October 19, 1995, the National Labor Relations Board issued a Decision and Order in this case.[1] The Board, in agreement with the administrative law judge, found, inter alia, that the Respondent violated the Act by reneging on tentative agreements it had reached with the Union during collective-bargaining negotiations for a successor agreement. It ordered the Respondent to reinstate those tentative agreements for the purposes of good-faith bargaining.

The judge, however, had not resolved whether, as contended by the Charging Party, the tentative agreements included a tentative agreement that the contract would be for a term of 3 years. Accordingly, the Board severed that matter and remanded it to the judge.

On November 3, 1995, Administrative Law Judge Marion C. Ladwig issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in opposition to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Massillon Newspapers, Inc. d/b/a The Independent, Massillon, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. On October 19, 1995, the Board issued its Decision and Order in *The Independent*, 319 NLRB 349, ordering the Respondent in part to ''Reinstate, for purposes of good-faith bargaining, the tentative agreement reached December 4, 1991, on conditions of employment.''

In its Decision and Order the Board pointed out that I failed to resolve the credibility dispute, or decide the issue, of whether ''the parties' December 4 tentative agreements included an agreement that a successor contract would be for a term of 3 years.'' It ordered that this issue be severed and remanded for ''credibility resolutions and findings of fact based on the existing record.''

On the entire record, including my observation of the demeanor of the witnesses, and after considering the positions of the parties, I make the following

FINDINGS OF FACT

A. *Conflicting Testimony*

International Representative Hannah Jo Rayl, who impressed me most favorably on the stand as a truthful, forthright witness with a good memory, testified that the Union's proposal for a 3-year contract term was discussed ''only on the 4th'' of December. Previously the term of the agreement had been considered an economic issue to be resolved after negotiation of noneconomic issues. (Tr. 830; G.C. Exh. 39.)

By December 4, in her negotiations with Attorney Michael Tannler, a vice president of the parent corporation, they had agreed to include in the tentative agreements a number of economic issues that would not ''be a new cost item, or a change in costs to the employer'' (Tr. 607–608, 805–806).

Rayl definitely recalled that at the end of the December 4 meeting (Tr. 649):

> I said to [Tannler] that we were looking at a contract that would run three years following the year in which this contract was signed, but that I couldn't fill that date in [on the compilation of tentative agreements that she was preparing] because. . . . I didn't know exactly when it would be signed.
>
> And he said, *okay*, that was *all right with him.* [Emphasis added.]

Rayl also testified that when negotiations resumed with Attorney Jon Flinker on January 14, 1992, she insisted: ''Jon, we already have an agreement that [the contract] would run for three years after the date of signing'' (Tr. 677, 693).

Reporter Marla Fox, another member of the union bargaining committee, recalled that in the December 4 meeting when Rayl said the contract ''would go on for three years''

---

[1] *The Independent*, 319 NLRB 349 (1995).

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] Contrary to the Respondent's contention, our Order does not ''lock in stone'' the parties' tentative agreements ''until the next contract is up for negotiations.'' We have ordered that the tentative agreements be reinstated for the purpose of good-faith bargaining until a successor agreement is reached or the parties reach lawful impasse. Nothing in our Order prevents the parties, during their ongoing collective-bargaining negotiations, from mutually agreeing to reopen and reconsider in light of changed circumstances, subjects on which they have tentatively agreed.

from ''the time we would actually sign it'' (Tr. 938–939, 985–986):

> A. There was no opposition from [Tannler].
> Q. Did he say anything?
> A. He indicated that it was fine with him. He didn't protest when she brought it up, that I can recall.
> . . . .
> Q. [By Mr. Flinker] Isn't it true that Mr. Tannler said nothing about a three-year term? True or false?
> A. False. My recollection is, is that he didn't voice any objections. He may have . . . *nodded his head* . . . . [Emphasis added.]
> . . . .
> A. What I'm telling you is I don't remember any specific dialogue from Mr. Tannler. If he would have objected to it, I would have remembered that and we wouldn't have had that in as part of the tentative agreement. If he would have had a problem with the three-year term, I believe Mr. Tannler, the way he conducted himself at the meetings I attended, would have been very forthright and said, ''Hanna Jo, I have a problem with that.'' And I did not hear that from him that day.

Reporter Roland Dreussi, another member of the union bargaining committee, did not remember Tannler's response, but he was also certain that an agreement had been reached on a 3-year term. He testified (Tr. 1702, 1760):

> On contract term and duration, we agreed that we would have a three year term for the contract.
> . . . .
> Q. All right. And did the Union tell Mr. Tannler that they wanted three years from the date of signing?
> A. Yes.
> Q. What was Mr. Tannler's response?
> A. I don't recall his response. I know that he did not object to that.
> . . . .
> I know that it was agreed that there would be a three year term on the contract.
> Q. [By Mr. Flinker] Do you remember what he said?
> A. I do not remember his exact words. . . . I remember that it was agreeable.
> I know that he did not say . . . no to the three year proposal.

By the time of trial, Attorney Tannler did not remember agreeing to the 3-year term for the agreement. He testified (Tr. 2314):

> At one time during the meeting of December 4th, Hanna Jo Rayl told me that it was the intention of the Guild to seek a contract that ran for three years from the time that an agreement was reached. . . . She made the comment to me, I admit that. I did not respond because I regarded that as something beyond my responsibility. I felt no necessity to respond to what their intention was in seeking an economic package. . . . No, I did not respond to it at all.

Tannler did not question Rahl's honesty [Tr. 2321]:

> Let me tell you something. I'm not really questioning Hannah Jo's testimony except for one thing. She was a pretty honest witness, let me tell you. But when she said that I agreed to a three-year contract, she's dead wrong. . . . I'm not questioning her honesty. She did say one thing wrong and that's that I agreed to a three-year contract. That's wrong.

B. *Concluding Findings*

Although Tannler did not remember doing so, I credit Rahl's testimony that Tannler agreed to a 3-year contract term. Not only did she appear on the stand to have the best recollection of what transpired at the December 4 meeting when she proposed the 3-year term, but both Committee Members Fox and Dreussi impressed me as being truthful witnesses when testifying with certainty that an agreement had been reached on the 3-year term.

I therefore discredit Attorney Tannler's faulty memory to the contrary and find that he did agree to the 3-year contract term.

CONCLUSION OF LAW

The parties' December 4, 1991 tentative agreements included an agreement that a successor contract would be for a term of 3 years.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

Paragraph 2(b) of the Board's October 19, 1995 Order is amended to read as follows:

''(b) Reinstate, for purposes of good-faith bargaining, the tentative agreement reached December 4, 1991, on conditions of employment, including the agreement that a successor contract would be for a term of 3 years.''

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.